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SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-67760; File Nos. SR-BSECC-2012-01; SR-BX-2012-052; SR-NASDAQ-2012-072; SR-Phlx-2012-95; SR-SCCP-2012-01)

August 30, 2012

Self-Regulatory Organizations; Boston Stock Exchange Clearing Corporation; NASDAQ OMX BX, Inc.; the NASDAQ Stock Market LLC; NASDAQ OMX PHLX LLC; Stock Clearing Corporation of Philadelphia; Order Approving Proposed Rule Changes With Respect to the Amendment of the By-Laws of The NASDAQ OMX Group, Inc.

I. Introduction

On June 20, 2012, the NASDAQ Stock Market LLC (“NASDAQ”), and on July 11, 2012, Boston Stock Exchange Clearing Corporation (“BSECC”), NASDAQ OMX BX, Inc. (“BX”), NASDAQ OMX PHLX LLC (“Phlx”), and the Stock Clearing Corporation of Philadelphia (“SCCP” and, with BSECC, BX, NASDAQ, and Phlx, the “SROs”), filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (“Act”),² and Rule 19b-4 thereunder,³ proposed rule changes with respect to the amendment of the by-laws (the “NASDAQ OMX By-Laws”) of The NASDAQ OMX Group, Inc. (“NASDAQ OMX”), the parent company of the SROs. The proposed rule changes were published for comment in the Federal Register on July 5, 2012, July 19, 2012, and July 27, 2012.⁴ The Commission received no comment letters on the proposals.

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

⁴ See Securities Exchange Act Release Nos. 67293 (June 28, 2012), 77 FR 39751 (July 5, 2012) (SR-NASDAQ-2012-072) (the “NASDAQ Notice”); 67433 (July 13, 2012), 77 FR 42522 (July 19, 2012) (SR-BX-2012-052); 67434 (July 13, 2012), 77 FR 42524 (July 19, 2012) (SR-Phlx-2012-95); 67487 (July 23, 2012), 77 FR 44301 (July 27, 2012) (SR-BSECC-2012-001); 67486 (July 23, 2012), 77 FR 44299 (July 27, 2012) (SR-SCCP-2012-01).

II. Background

NASDAQ OMX is proposing to amend provisions of the NASDAQ OMX By-Laws pertaining to the composition of the Management Compensation Committee of the NASDAQ OMX Board of Directors. Specifically, NASDAQ OMX proposes to amend the compositional requirements of its Management Compensation Committee as set forth in Section 4.13 of the NASDAQ OMX By-Laws to replace a requirement that the committee be composed of a majority of Non-Industry Directors⁵ with a requirement that the number of Non-Industry

⁵ Article I(j) of the NASDAQ OMX By-Laws defines an “Industry Director”, in part, as a Director (excluding any two officers of NASDAQ OMX, selected at the sole discretion of the Board, amongst those officers who may be serving as Directors (the “Staff Directors”)) who (1) is or has served in the prior three years as an officer, director, or employee of a broker or dealer, excluding an outside director or a director not engaged in the day-to-day management of a broker or dealer; (2) is an officer, director (excluding an outside director), or employee of an entity that owns more than ten percent of the equity of a broker or dealer, and the broker or dealer accounts for more than five percent of the gross revenues received by the consolidated entity; (3) owns more than five percent of the equity securities of any broker or dealer, whose investments in brokers or dealers exceed ten percent of his or her net worth, or whose ownership interest otherwise permits him or her to be engaged in the day-to-day management of a broker or dealer; (4) provides professional services to brokers or dealers, and such services constitute 20 percent or more of the professional revenues received by the Director or 20 percent or more of the gross revenues received by the Director’s firm or partnership; (5) provides professional services to a director, officer, or employee of a broker, dealer, or corporation that owns 50 percent or more of the voting stock of a broker or dealer, and such services relate to the director’s, officer’s, or employee’s professional capacity and constitute 20 percent or more of the professional revenues received by the Director or 20 percent or more of the gross revenues received by the Director’s firm or partnership; or (6) has a consulting or employment relationship with or provides professional services to NASDAQ OMX or any affiliate thereof or to the Financial Industry Regulatory Authority (“FINRA”) or has had any such relationship or provided any such services at any time within the prior three years.

Article I(m) of the NASDAQ OMX By-Laws defines a “Non-Industry Director”, in part, as a Director (excluding the Staff Directors) who is (1) a Public Director; (2) an officer,

Directors on the committee equal or exceed the number of Industry Directors. The proposed compositional requirement for the committee with regard to the balance between Industry Directors and Non-Industry Directors would be the same as that already provided for in the NASDAQ OMX By-Laws with respect to the Executive Committee and the Nominating and Governance Committee, as well as the full Board of Directors.

According to the SROs, the proposed changes will provide NASDAQ OMX with a greater flexibility with regard to populating a committee that includes directors with relevant expertise and that is not excessively large in relation to the size of the full Board of Directors, while continuing to ensure that directors associated with Exchange members and other broker-dealers do not exert disproportionate influence of the governance of NASDAQ OMX.⁶

III. Discussion and Commission Findings

The Commission has reviewed carefully the proposed rule changes and finds that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange or a registered clearing agency.⁷ In particular, the Commission finds that the proposed rule changes are consistent with Section 6(b) of the Act,⁸ which, among other things, requires a national securities exchange to be so organized and have the capacity to be able to carry out the purposes of the Act and to enforce

director, or employee of an issuer of securities listed on a national securities exchange operated by any SRO; or (3) any other individual who would not be an Industry Director.

Article I(n) of the NASDAQ OMX By-Laws defines a “Public Director”, in part, as a Director who has no material business relationship with a broker or dealer, NASDAQ OMX or its affiliates, or FINRA.

⁶ See, e.g., NASDAQ Notice, 77 FR at 39752.

⁷ In approving the proposed rule changes, the Commission has considered their impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

⁸ 15 U.S.C. 78f(b).

compliance by its members and persons associated with its members with the provisions of the Act, the rules and regulations thereunder, and the rules of the exchange, and is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission also finds that the proposed rule changes are consistent with Section 17A of the Act⁹ because the proposed rule changes will help ensure that BSECC and SCCP are so organized and have the capacity to comply with the provisions of the Act and the rules and regulations thereunder.

The proposed changes to the composition requirement of NASDAQ OMX's Management Compensation Committee are identical to the composition requirements currently in effect for the Executive Committee, Nominating and Governance Committee, and full Board of Directors of NASDAQ OMX.¹⁰ Furthermore, the NASDAQ OMX Management Compensation Committee is required to be comprised of Independent Directors (as defined in NASDAQ's rules).¹¹

IV. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule changes are consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange and a registered clearing agency.

⁹ 15 U.S.C. 78q-1.

¹⁰ See Sections 4.3, 4.13(d) and 4.13(h)(1) of NASDAQ OMX By-Laws.

¹¹ See NASDAQ Rule 5605(d). Rule 5605(d) provides that the compensation committees of NASDAQ-listed companies must be comprised solely of Independent Directors. NASDAQ OMX is a NASDAQ-listed company.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act¹² that the proposed rule changes (SR-BSECC-2012-001; SR-BX-2012-052; SR-NASDAQ-2012-072; SR-Phlx-2012-95; and SR-SCCP-2012-01), are approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹³

Kevin M. O'Neill
Deputy Secretary

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¹²

Id.

¹³

17 CFR 200.30-3(a)(12).